

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Robert Leon Beane Jr.

Docket No. 268340

LC No. 05-004351 FC

Helene N. White  
Presiding Judge

Henry William Saad

Christopher M. Murray  
Judges

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The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued May 24, 2007 is hereby VACATED. A new opinion will be issued.

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A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 22 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT LEON BEANE, JR.,

Defendant-Appellee.

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UNPUBLISHED

May 24, 2007

No. 268340

Lake Circuit Court

LC No. 05-004351-FC

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order dismissing the case against defendant on the basis of insufficient evidence following the trial court's suppression of defendant's confession. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I.

Facts

After defendant's arrest, Lake County Sheriff's Department Sergeant Harold Nichols and Deputy Ron Brown interviewed defendant about the theft of a pickup truck. After defendant was advised of his *Miranda*<sup>1</sup> rights and signed a form that he understood those rights, the officers questioned him about the pickup truck incident. After approximately 11 minutes of questioning, defendant stated, "I said all I'm gonna say about it. Now we're reaching to to [sic] I don't want to talk about it without a lawyer." Sergeant Nichols responded, "About the truck incident, you mean?" Defendant generally responded in the affirmative. The interrogating officers then asked him whether he wanted to help "Kenny,"<sup>2</sup> and the conversation continued without further reference to any request for an attorney.

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

<sup>2</sup> Kenny Rogers was with defendant at the time he was apprehended; the officers told defendant that Rogers was being charged with aiding and abetting a fugitive from justice.

At some point, the conversation turned to defendant's involvement in a separate incident, a break-in at a Jack's Quick Stop convenience store and the theft of a safe from the store. Defendant confessed to the break-in and theft of the safe, and said that he had broken out the door of the convenience store with a concrete block and carried a safe out of the building and that he had retrieved money out of the safe by turning it upside down and turning the crank. Later, defendant took the officers to the safe, and it was recovered near an area side street. Although the safe was virtually empty at the time of its recovery, the manager of the convenience store testified at defendant's preliminary examination that it had contained approximately \$10,000 in cash, credit slips, and checks when it was stolen. Following the preliminary examination, defendant was bound over for trial on charges of safe breaking, MCL 750.531, and breaking and entering a building with the intent to commit larceny, MCL 750.110.

## II.

### Suppression Hearing

The trial court granted defendant's motion to suppress his confession, and held that, pursuant to *Miranda*, *supra*, and *Edwards v Arizona*, 451 US 477; 101 S Ct 1880; 68 L Ed 2d 378 (1981), defendant's Fifth Amendment right to counsel was violated when the police questioned defendant after his request for an attorney.<sup>3</sup> An order was later entered dismissing the case on the basis of insufficient evidence in light of the suppressed confession.

## III.

### Analysis

On appeal from a ruling on a motion to suppress evidence of a confession, this Court reviews the record, as well as the trial court's conclusions of law and application of the law to the facts, de novo. *People v McBride*, 273 Mich App 238; 729 NW2d 551 (2006); *People v Adams*, 245 Mich App 226, 230; 627 NW2d 623 (2001); *People v Kowalski*, 230 Mich App 464, 472; 584 NW2d 613 (1998). However, the trial court's factual findings are reviewed for clear error. *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000); *Kowalski*, *supra* at 471-472. A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake was made. *People v Wilkens*, 267 Mich App 728; 705 NW2d 728 (2005); *People v Hall*, 249 Mich App 262, 267-268; 643 NW2d 253 (2002).

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<sup>3</sup> The trial court gave only cursory consideration to whether the statement constituted an unequivocal request for counsel. Instead, the court's lengthy oral opinion focused primarily on whether defendant reinitiated the conversation following his request for counsel and whether, notwithstanding that request, the police properly questioned defendant about a different subject matter. The court concluded that defendant did not initiate further communication and that, because Fifth Amendment rights were not "incident specific," the officers were not permitted to question defendant about the unrelated topic of the convenience store break-in after his request for counsel.

Under the Fifth and Fourteenth Amendments, custodial interrogation must be preceded by advice to the defendant that he has the right to remain silent and the right to an attorney. *Edwards, supra* at 481-482; *Miranda, supra* at 479. If, after receiving *Miranda* warnings, the defendant waives his right to counsel, law enforcement officers may question him. *Davis v US*, 512 US 452, 458; 114 S Ct 2350; 129 L Ed 2d 362 (1994); *North Carolina v Butler*, 441 US 369, 372-376; 99 S Ct 1755; 60 L Ed 2d 286 (1979). But if the defendant invokes his right to counsel, he may not be questioned unless a lawyer has been made available to him and is present, or unless the defendant himself initiates further communication. *Davis, supra* at 458; *Minnick v Mississippi*, 498 US 146; 111 S Ct 486; 112 L Ed 2d 489 (1990); *Arizona v Roberson*, 486 US 675; 108 S Ct 2093; 100 L Ed 2d 704 (1988); see also *Edwards, supra* at 484; *Adams, supra* at 230; *Kowalski, supra* at 478. This rule “is *not* offense specific: Once a suspect invokes the *Miranda* right to counsel for interrogation regarding one offense, he may not be reapproached regarding any offense unless counsel is present.” *McNeil v Wisconsin*, 501 US 171, 177; 111 S Ct 2204; 115 L Ed 2d 158 (1991) (emphasis in original), citing *Roberson, supra*.

Nevertheless, when interrogating officers could not reasonably have known whether the defendant actually wanted a lawyer, a rule requiring immediate cessation of questioning “would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity.” *Michigan v Mosely*, 423 US 96, 102; 96 S Ct 321; 46 L Ed 2d 313 (1975). Accordingly, *Edwards* requires a reviewing court to determine whether the defendant *actually* invoked his right to counsel, applying an objective inquiry. *Davis, supra* at 458-459; *Smith v Illinois*, 469 US 91, 95; 105 S Ct 490; 83 L Ed 2d 488 (1984); *Fare v Michael C*, 442 US 707, 719; 99 S Ct 2560; 61 L Ed 2d 197 (1979). The police are not required to cease questioning or to clarify whether an accused wants counsel when an ambiguous statement regarding counsel is given. *Davis, supra* at 459; *Adams, supra* at 237-238. “[T]he *likelihood* that a suspect would wish counsel to be present is not the test for applicability of *Edwards*.” *McNeil, supra* at 178 (emphasis in original). Rather, as the *Davis* Court explained:

Invocation of the *Miranda* right to counsel “requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.” But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning....

Rather, the suspect must unambiguously request counsel. As we have observed, “a statement either is such an assertion of the right to counsel or it is not.” Although a suspect need not “speak with the discrimination of an Oxford don,” ... he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect.... [*Id.* at 459 (citations omitted; emphasis in original).]

Applying the foregoing principles, the *Davis* Court held that the petitioner’s statement, “Maybe I should talk to a lawyer,” was not a request for counsel, and that there was no requirement that law enforcement officers cease his interrogation. *Davis, supra* at 462. Citing *Davis*, this Court held in *People v Tierney*, 266 Mich App 687, 711; 703 NW2d 204 (2005), that

the defendant's statements, "Maybe I should talk to an attorney," and "I might want to talk to an attorney," did not constitute unequivocal invocations of the right to counsel. Similarly, in *Adams, supra*, this Court held that the defendant's statement, "Can I talk to him [a lawyer] right now?" was insufficient to invoke the defendant's right to counsel, where that statement was precipitated by "inquiries into the way the process worked" and where the defendant requested a break to think about whether he wanted to speak to a lawyer. *Id.* at 238.

In *People v Granderson*, 212 Mich App 673; 538 NW2d 471 (1995), upon being advised of his right to the appointment of an attorney, the defendant responded, "Yeah, I'm—I'm ah need that 'cause I can't afford none." This Court held that the statement was properly construed in the future tense, rather than as an unambiguous, unequivocal expression of a present desire for counsel. *Id.* at 676-677. See also *McBride, supra* (holding that the defendant's inquiries whether she needed a lawyer were not unequivocal demands for counsel). Contrast *Smith v Illinois*, 469 US 91; 105 S Ct 490; 83 L Ed 2d 488 (1984) (where interrogating officers asked the petitioner whether he understood his right to have counsel present and he responded, "Uh, yeah. I'd like to do that," he had unequivocally invoked his right to counsel and the officers violated that right by continuing to interrogate him).

We conclude that defendant's statement, "I said all I'm gonna say about it. Now we're reaching to I don't want to talk about it without a lawyer," did not constitute an unambiguous, unequivocal invocation of his constitutional right to counsel. Similarly to the statement at issue in *Granderson, supra*, the fact that defendant prefaced his comment with the words "[n]ow we're reaching to" supports a future-tense interpretation and strongly suggests that he had not yet made a decision to cut off questioning. Moreover, the scope of the conversation at this point was limited to the vehicle theft incident for which defendant had been arrested. Although the *Edwards* rule requires that all questioning regarding *any* topic cease following a proper invocation of the right to counsel, the fact that defendant's statement was limited to the topic at hand ("I said all I'm gonna say *about it*") bolsters the conclusion that defendant had not definitively invoked his right to counsel. Like the statements in *Davis* and *Tierney, supra*, and contrary to the petitioner's direct request in *Smith, supra*, defendant's statement here was merely an indeterminate comment indicating the *possibility* that he may desire a lawyer's presence, rather than a *present* demand for counsel.

In other words, "a reasonable officer in light of the circumstances would have understood only that [defendant] *might* be invoking the right to counsel." *Davis, supra* at 459 (emphasis in original). Accordingly, the officers were not required to cease questioning. *Id.*; *Tierney, supra* at 711. Indeed, Sergeant Nichols's follow-up question regarding whether defendant did not wish to speak further about the truck incident constituted an entirely proper attempt to clarify defendant's intentions. See *Davis, supra* at 461-462 (noting that clarifying questions, although not *required* in response to ambiguous or equivocal statements, constitute "good police practice" that "help protect the rights of the suspect by ensuring that he gets an attorney if he wants one, and ... minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel").

Accordingly, we reverse the trial court's suppression of defendant's confession, we reverse the dismissal of this case and remand to the trial court to proceed consistent with this Opinion.

We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Christopher M. Murray